to the sensible inconvenience and discomfort of plaintiff's tenants, or to the actual tangible and substantial injury of plaintiff's reality. * * * Is there, in case of nuisance produced by smoke alone, any satisfactory reason upon which the court of equity can withhold injunctive relief and remit the injured party to his action at law? In Crump *v.* Lambert (L. R. 3 Eq. 409), Romilly, M. R., said: 'The law on this subject is the same, whether it be enforced by action at law or by bill in equity. In any case where a plaintiff could obtain substantial damages at law, he is entitled to an injunction to restrain the nuisance in this court. There is, I apprehend, no distinction between any of the cases, whether it be smoke, smell, noise, vapor or water, or any other gas or fluid. And in that case an injunction was granted.' The doctrine of this case has been adopted by the English courts, and generally by the courts of this country.

"In Wood on Nuisances, section 502, the author, after reviewing many cases English and American, says: 'Thus it will be seen that, even in the ordinary uses of buildings, the owners and occupants are bound not only to see to it that their chimneys are so arranged as to carry off the smoke developed therein, but are also bound to use such fuel as will produce the least obnoxious smoke.' * * * It has been said that the final settlement of property rights does not lie in the broad discretion of the chancellor, but in the clear legal and equitable rules which bind the chancellor himself. The case of Somerset Water, Light & Traction Co. *v.* Hyde (129 Ky. 402), where an injunction to restrain the defendant from discharging sewerage upon the plaintiff's land was denied, and the case of City of Wheeling *v.* Natural Gas Co. (74 W. Va. 372), where the city was refused an injunction to restrain the defendant from supplying gas in violation of its franchise, because of the inconvenience it would cause to the public, forcefully illustrate what we believe to be a misconception of the extent of equitable power. The following cases, among others, support what we believe to be the true rule: Bristol *v.* Palmer (83 Vt. 54), Smith *v.* Rochester (38 Hun, N. Y. 612), 5 Pomeroy's Equity Jurisprudence (530, 531).

"The case in hand is purely one for injunctive relief against a nuisance. Equity is asked to do no more than to restrain the defendant from using soft coal, that is 'such as throws out a black dense smoke,' and the evidence in the record is such as to authorize a finding by the jury that the use of coke was at once convenient and practical. Injunctive relief can not be denied the plaintiff, although the nuisance results from smoke alone."

Landlord and Tenant—Vermin as Constituting Constructive Eviction.—In Hopkins *v.* Murphy, 124 N. E. 252, the Supreme Judicial

Court of Massachusetts held that when a tenement in a new building was let, and more than two years thereafter cockroaches and other vermin appeared, though the landlord unsuccessfully attempted to exterminate them on the tenant's demand, he was not guilty of a constructive eviction.

The court said: "It is well settled that in a lease of real estate no covenant is implied that it should be fit for occupation, and this is true of a lease of a building for a dwelling house (Royce *v.* Guggenheim, 106 Mass. 201, 202; Murray *v.* Albertson, 50 N. J. Law, 167). In the absence of an express agreement between the parties, or of fraudulent representations or concealment by the lessor, the lessee takes the demised premises as they exist, and the rule of *caveat emptor* applies (Skally *v.* Shute, 132 Mass. 367; Roth *v.* Adams, 185 Mass. 341). To constitute a constructive eviction it must appear that by his intentional and wrongful act the landlord has deprived the tenant of the beneficial use or enjoyment of the whole or a part of the leasehold (Smith *v.* McEnany, 170 Mass. 26).

"The record shows that the demised premises were in a new building, and had not been occupied before the defendant's tenancy began, and that no cockroaches were seen there by the defendant until more than two years thereafter. There is nothing to indicate that the plaintiff was responsible for the presence of the insects, or that he failed in any duty which he owed to the defendant. His unsuccessful attempt to exterminate them could not be found to be a constructive eviction of the defendant. Everybody knows that cockroaches, ants and other objectionable insects will sometimes appear in dwelling houses to the annoyance of the occupants. It is manifest that the plaintiff was not responsible for the presence of the cockroaches, and that he did nothing with the intention and effect of depriving the defendant of the demised premises. Under such circumstances the evidence would not warrant a finding that there was an eviction. The fact that the landlord, upon notice from the tenant, attempted to remedy existing conditions, was a gratuitous act, and was not evidence of an eviction (McKeon *v.* Cutter, 156 Mass. 296)."